

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition for Declaratory Ruling and	)	
Request for Expedited Action on the	)	
July 15, 1997 Order of the Pennsylvania	)	NSD File No. L-97-42
Public Utility Commission Regarding	)	
Area Codes 412, 610, 215, and 717	)	
 Implementation of the Local	)	
Competition Provisions of the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	

**COMMENTS OF GTE**

GTE Service Corporation and its below-listed affiliates<sup>1</sup> (collectively, "GTE") respectfully submit their comments concerning the California Public Utility Commission's ("CPUC") Petition for Declaratory Ruling in this docket.<sup>2</sup> The CPUC identifies several supposed infirmities in the Commission's Pennsylvania Order<sup>3</sup> for which the CPUC

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<sup>1</sup> GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated.

<sup>2</sup> Petition for Reconsideration by the California Public Utilities Commission and the People of the State of California, Filed November 5, 1998 (the "Petition").

<sup>3</sup> In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, NSD File No. L-97-42, and Implementation of the Local Competition Provisions of the Telecommunications Act of

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seeks reconsideration.

GTE continues to support the Commission's determinations in the Pennsylvania Order and urges the Commission to reject the CPUC's request to modify the timing sequence for implementing a rationing plan. However, GTE also recognizes that the already chaotic situation in California may become intolerable if the existing lottery system is terminated abruptly. Therefore, GTE believes that the Commission should permit a minimal transition period during which the CPUC will ensure relief plans and implementation dates are approved, and to remove all aspects of the existing lottery system that violate FCC regulations.

**I. THE CPUC MUST ABIDE BY THE RULES ESTABLISHED BY THE COMMISSION IN THE PENNSYLVANIA ORDER.**

In establishing its NXX lottery plan in 1996, the CPUC believed it was acting within the scope of authority granted in the *FCC's Local Competition Second Report and Order*<sup>4</sup> with respect to the CPUC's rationing of NXX codes. Notwithstanding the CPUC's presumption regarding its authority to establish an NXX lottery system, the Commission rejected this notion in the Pennsylvania Order stating, "... we did not delegate any authority to state commissions in the area of NXX code allocation or administration. Therefore, a state commission ordering NXX code rationing, or any other NXX code conservation measure, is, under the current regulatory structure, acting

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1996, CC Docket No. 96-98, *Memorandum Order and Opinion on Reconsideration* (rel. September 28, 1998) ("Order" or "Pennsylvania Order").

<sup>4</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, FCC 96-333 (rel. August 8, 1996).

outside the scope of its delegated authority."<sup>5</sup> The CPUC now seeks reconsideration based on its belief that the Pennsylvania Order limits rather than expands states jurisdiction to implement area code relief.<sup>6</sup>

The Order provides for the delegation of limited additional authority to the states to afford state commissions the needed flexibility to become involved in attempts to conserve NXX codes when an area code is facing relief.

"We therefore delegate authority to state commissions to order NXX code rationing *only* in conjunction with area code relief decisions, if the industry has been unable to reach consensus on a rationing plan to extend the life of an area code until implementation of relief. A state commission, therefore, may only impose an NXX rationing plan if the state commission has decided on a specific form of area code relief (i.e., a split, overlay, or boundary realignment) *and* has established an implementation date."<sup>7</sup>

In its Petition, the CPUC is essentially seeking reconsideration in two principal areas. First, the CPUC asks that the Commission authorize states to implement NXX code rationing *after* jeopardy has been declared and *before* a relief plan has been adopted or a date set.<sup>8</sup> The CPUC bases its rationale for this change in the current rules on statutory requirements contained in the new § 7930 of the California Public Utilities Code. That state statute details meeting and notice requirements for implementing area code relief. The CPUC argues that compliance with this state requirement frequently means that the PUC does not have the opportunity to adopt a relief plan before the NPA is in jeopardy. Oddly, by its own admission, the CPUC was

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<sup>5</sup> Order, at ¶23.

<sup>6</sup> Petition, at 4.

<sup>7</sup> Order, at ¶24 (emphasis added).

<sup>8</sup> Petition, at 13 (emphasis in original).

instrumental in proposing to the California Legislature sweeping changes to §7930 which, when they became effective on January 1, 1999, resulted in even more detailed meeting and notice requirements for implementing area code relief.<sup>9</sup> The very statute that the CPUC blames for its difficulties in effecting timely area code relief is a statute supported by the CPUC before the California Legislature. *The fact that this state statute specify actions and time frames for relief planning is not a basis for the CPUC to be granted dispensation from this aspect of the Order.*<sup>10</sup> The solution lies in starting the planning process sooner, not the continuation of rationing plans.

The industry guidelines for NPA Code Relief Planning<sup>11</sup> state that the relief planning process should begin for area codes projected to exhaust within the next 5 to 10 years. The California statute establishes the timing of specific actions that are well within that planning horizon. It is the timely adoption of an acceptable industry relief plan that is required so as to prevent the NPA from entering into an exhaust condition. State commissions should move quickly to adopt a code relief method. If the state does not adopt a code relief method within a specified timeframe, then the North American Number Plan Administrator ("NANPA") should exercise the authority granted under Commission guidelines to begin the implementation of area code relief.<sup>12</sup>

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<sup>9</sup> Petition, at 12.

<sup>10</sup> GTE does not quarrel with the CPUC's belief that its support for the statutory changes was designed to protect the industry and the public. (Petition, at 12.) However, these protections can not now be used to defend an ongoing practice of code rationing that is in conflict with the Pennsylvania Order.

<sup>11</sup> See Industry Numbering Committee, NPA Code Relief Planning & Notification Guidelines, INC 97-0404-016, Reissued December 11, 1998.

<sup>12</sup> See Order, at ¶26: "If state commissions do not make decisions on area code relief when forecasts indicate that NXX depletion is imminent, carriers may petition this

If a state finds that it is necessary to implement a rationing plan, it is most likely because the relief planning process has failed. The existing industry relief planning process allows sufficient time to accommodate the statutory timeframes. Therefore, the focus should not be on the mechanics of the rationing plan, but on the avoidance of needing to implement a rationing plan in the first place. Timely planning and implementation of relief should be completed in advance of the need to ration the assignment of NXX codes. Obviously, the problem exists in California, and has occurred in other states, where relief planning was not completed in time to prevent a jeopardy situation.

**II. THE COMMISSION SHOULD PERMIT STATE COMMISSIONS TO RESOLVE NUMBER RATIONING DISPUTES WITHIN THE GUIDELINES ESTABLISHED IN THE PENNSYLVANIA ORDER.**

The CPUC is seeking additional authority to resolve disputes among industry participants pertaining to an NXX code rationing plan.<sup>13</sup> GTE recognizes that rationing may still be required, on a limited basis, to bridge the time until the relief is implemented. The Commission must ensure that the focal point for dispute resolution lies ultimately with the industry. It is only after the industry reaches an impasse that the state commission may order a rationing plan. More importantly, any state-ordered rationing plan must be in conformance with FCC regulations.

The Commission's regulations generally require, among other things, that numbering administration: (1) facilitate entry into the telecommunications marketplace

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Commission for relief. The Commission, under its exclusive jurisdiction over numbering, can order the code administrator (which ultimately will be the NANPA) to implement area code relief."

<sup>13</sup> Petition, at 17.

by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers; (2) not unduly favor or disfavor any particular industry segment or group of telecommunications consumers; and (3) not unduly favor one telecommunications technology over another.<sup>14</sup> The existing lottery system in California appears to fail this test. Based on the CPUC's discussion with the Commission,<sup>15</sup> the lottery in California is deemed to be "state-ordered" because the CPUC established a 60/40 split of the remaining codes for "initial" and "subsequent" requirements, respectively. Specifically, 60 percent of the remaining codes are available for carriers that do not have a code for a specific area; the remaining 40 percent are available for carriers requiring codes for growth.

Whether or not the CPUC acted appropriately in ordering the specifics of the lottery absent industry consensus is not the central issue. The more important question is whether or not the lottery unduly favors or disfavors a particular segment of the industry. Allocating the remaining codes into "buckets" between "initial" and "growth" suggests that sufficient information is available to know that the need of new entrants will be greater than the need for growth or vice versa. Any plan that favors one segment over the other is contrary to the Commission's regulations concerning numbering administration.

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<sup>14</sup> Order, at ¶6.

<sup>15</sup> Petition, at 14.

**III. THE COMMISSION SHOULD ALLOW CALIFORNIA AND OTHER SIMILARLY SITUATED STATES A MINIMAL TRANSITION PERIOD DURING WHICH AREA CODE RELIEF PLANS CAN BE ESTABLISHED AND RATIONING PLANS ARE BROUGHT INTO CONFORMANCE WITH EXISTING REGULATIONS.**

Given the accelerated rate at which the demand for numbers is growing, without California's lottery mechanism for rationing NXXs, there is likely to be a severe numbering crisis in California. The Commission should therefore prescribe a minimal period of time during which the CPUC would be permitted to continue conducting the monthly NXX lottery. During this interval, the CPUC would establish area code exhaust forecasting procedures that accommodate the requirements of § 7930 of the California Public Utilities Code. Finally, the CPUC must revise its lottery procedures so that they conform to the Commission's existing regulations.

GTE recognizes that poor forecasting, rate center restrictions, lack of audits, and the historical manner in which numbers have been assigned are contributing factors to the code management dilemma. The industry is taking measures to rectify the situation on a national basis through industry efforts under the watchful eye of the FCC. These efforts will be undermined if each state is granted exceptions to the thoughtful considerations found in the Pennsylvania Order.

**IV. CONCLUSION.**

The Commission, in its Pennsylvania Order, has properly set the framework for ensuring that area code relief takes precedence over stopgap rationing plans. State commissions must decide on a code relief method on a timely basis and not use code rationing or code conservation measures as a substitute for area code relief. GTE urges the Commission to reject the CPUC's request to modify the timing sequence for


implementing a rationing plan. However, the Commission should permit a minimal transition period during which the CPUC will ensure relief plans and implementation dates are approved, and to remove all aspects of the existing lottery system that violate FCC regulations.

Dated: February 5, 1999

Respectfully submitted,

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affiliated domestic companies

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